

**HOUSE . . . . . No. 3189**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act relative to roadway re-openings and safety..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           The General Laws are hereby amended by inserting after chapter 84 the following  
2 chapter:

3           Chapter 84A

4           Roadway Re-openings Safety

5           SECTION 1. The department of highway shall conduct construction activities and ensure  
6 development of project plans for state roads and bridges in coordination with municipal agencies  
7 to achieve the following:-

8           Ensure the development of project plans and construction timelines.

9           Communicate with all project participants, including investor owned utilities, to ensure  
10 that all are aware of project timelines and will perform their respective functions within the  
11 prescribed time frame.

12           Develop a form that presents road closing and detour related information to include, but  
13 not be limited to, traffic volumes re-routed and detour length to determine incremental mileage,  
14 fuel consumed and green house gas emissions resulting from delayed road openings.

15           In the event of a delayed road re-opening and that a completed copy of the form detailed  
16 above is provided to the applicable regulatory authority.

17           Advise the applicable regulatory authority at the end of each delayed roadway re-opening  
18 and provide that regulatory authority with a completed form detailing the cumulative impacts  
19 resulting from that project delay.

20           Coordinate with the State Police to cite for non-relocated public utility assets that pose a  
21 safety hazard in state roadways at the end of road construction projects citations shall be sent to  
22 the utility and a copy to the appropriate agency. Assist local agencies in developing a project  
23 timeline and completion of the above form for road closings within their jurisdiction. In the  
24 event of a delayed road re-opening in a local jurisdiction, provide a complete property of the  
25 form to the appropriate regulatory authority. At the end of a delayed road re-opening in a local  
26 jurisdiction, provide the regulatory authority with a completed form detailing the cumulative  
27 impacts resulting from the project delay.

28           SECTION 2. Municipal Public Works' Departments shall have the responsibility to  
29 ensure roads within their jurisdiction are operable and in safe conditions. Such departments shall  
30 be responsible for, but not limited to, the following:-

31           Ensure the development of project plans and construction timelines.

32 Assist the department of highways to complete their form for each road closure within its  
33 jurisdiction as part of the initial project planning process.

34 Communicate with all project participants, including public utilities, to ensure that all are  
35 aware of the project timelines and will perform their respective functions within the prescribed  
36 time frame.

37 In the event of a delayed road re-opening due to a public utility, provide information on  
38 each such delayed road re-opening to the department of highways.

39 Advise the department of highways of the end of each delayed road re-opening.

40 Coordinate with local police to cite for non-relocated public utility assets that pose a  
41 safety hazard in municipally operated roadways at the end of road construction projects.  
42 Municipal citations will be sent to the attention of the traffic coordinator for that utility and a  
43 copy to the concerned regulatory authority.

44 The department of public works may contact the utility for assistance in resolving right-  
45 of-way issues with the utility. If the right-of-way issue is not resolved within 30 days from the  
46 date of notice, the department of public works or such other municipal agency with responsibility  
47 over the issue, may contact the appropriate regulatory authority for assistance in resolving the  
48 issue.

49 SECTION 3. The department of public utilities shall perform the following functions:-

50 Ensure that all investor owned public utilities always maintain designated traffic  
51 coordinators and contact information, including a full address, phone, fax, and email address.

52 This database shall be reality available on the DPU website and shall be maintained at minimum,  
53 monthly.

54 Shall review the job/position description of the traffic coordinators submitted by each  
55 investor owned utility and ensure that it complies with the intent of this law and shall advise each  
56 utility of any discrepancies in the content of the job/position.

57 Shall maintain a file of current job/position descriptions for the traffic coordinator for  
58 each investor owned public utility.

59 Reasonable and just expenses associated with establishment and operation of a utility  
60 traffic coordinator position within each utility shall be allowable for ratemaking purposes.

61 Maintain information files on all delays in public roadway openings and public roadway  
62 safety related issues and accumulate those files for each investor owned utility from the time of  
63 enactment of this law through the completion of the next rate case for that utility. Subsequently,  
64 a traffic file will be maintained for each investor owned public utility during the time interval  
65 between rate cases for each such utility.

66 The commissioner of the DPU shall review and consider the traffic related delays and  
67 safety violations will be considered to be a positive factor in rate making determination for that  
68 utility.

69 Shall ensure that no municipal public roadway safety related fines or other such civil  
70 penalties are not passed onto the ratepayers of that utility, but shall be for the account of the  
71 share holders of that utility. Municipal public roadway safety related fines or other such civil

72 penalties incorrectly included in rate base shall be removed and the utility earnings reduced by  
73 no more than 10 times the amount improperly accounted for.

74 Shall prepare an annual report on all utility related delays on roadway re-openings and  
75 roadway safety issues. This report shall also include information on incremental distances  
76 driven, fuel consumed, and greenhouse gas emissions due to delayed roadway re-openings for  
77 each utility. The report should be prepared annually for each calendar year and presented to the  
78 undersecretary of energy within the Executive Office of Energy and Environmental Affairs  
79 (EOEEA) not later than the end of the first calendar quarter.

80 SECTION 4. The department of telecommunications and cable shall perform the  
81 following functions:

82 Ensure that all investor owned public utilities always maintain a designated traffic  
83 coordinator.

84 Maintain an up-to-date database of all public utility traffic coordinators and contact  
85 information, including a full address, phone, fax, and email address. This data base shall be  
86 readily available on the DTC website and shall be maintained at minimum, monthly.

87 The DTC shall review the job/position description of the traffic coordinators submitted  
88 by each investor owned utility and ensure that it complies with the intent of this law and shall  
89 advise each utility of discrepancies in the content of the job/position description.

90 The DTC shall maintain a file of current job/position descriptions for the traffic  
91 coordinator for each investor owned public utility.

92 Reasonable and just expenses associated with the establishment and operation of a utility  
93 traffic coordinator position within each utility shall be allowable for ratemaking purposes.

94 Maintain information filed on all delays in public roadway openings and public roadway  
95 safety related issues and accumulate those files for each investor owned utility from the time of  
96 enactment of this law through the completion of the next rate case for that utility. Subsequently,  
97 a traffic file will be maintained for each investor owned public utility during the time interval  
98 between rate cases for each such utility.

99 The commissioners of the DTC shall review and consider the traffic related delays and  
100 safety issues in each such utilities rate making case. The absence of or infrequent reopening  
101 delays and traffic safety violations will be considered a positive factor in rate making  
102 determination for that utility.

103 The DTC shall ensure that no municipal public roadway safety related fines or other such  
104 civil penalties are not passed on to the ratepayers of that utility, but shall be for the account of the  
105 shareholders of that utility. Municipal public roadway safety related fines or other such civil  
106 penalties incorrectly included in rate base shall be removed and the utility earnings reduced by  
107 no more than 10 times the amount improperly accounted for.

108 The DTC shall prepare an annual report on all utility related delays on roadway re-  
109 openings and roadway safety issues. This report shall also include information on incremental  
110 distances driven, fuel consumed, and greenhouse gas emissions due to delayed roadway re-  
111 openings for each utility. The report should be prepared annually for each calendar year and  
112 presented to the undersecretary the office of consumer affairs and business regulation not later  
113 than the end of the first calendar quarter.

114 SECTION 5. Public utilities shall have the following responsibilities.

115 They shall appoint a traffic coordinator and provide the full contact information,  
116 including a full address, phone, fax, and email address to the responsible regulatory authority  
117 within the commonwealth. If the traffic coordinator is replaced, the utility shall ensure that the  
118 contact information is fully updated at the time of the personnel change.

119 The traffic coordinator shall be the designated representative, who will be responsible  
120 within that utility to perform these and other functions such as, but not limited to, the following:

121 Maintain the schedules and information on each road project that may require the  
122 relocation, removal or replacement or other action on the part of the utility to permit the timely  
123 and safe re-opening of public roadways. Travel to roadway work sites or to other locations to  
124 meet with the department of highways and local departments of public works as required to  
125 effectively understand and coordinate roadway projects.

126 Coordinate the assignment of utility workers to work on utility assets to ensure the timely  
127 reopening and/or safe operation of public roadways in line with each road construction time  
128 table.

129 The event that utility assets are preventing a roadway reopening and/or posing a roadway  
130 safety hazard and are cited and fees or civil penalties assessed, the traffic coordinator shall be  
131 delegated the authority to effect payment of such penalty to the proper authority assessing such  
132 penalty. In the event of delays in paying civil penalties, the traffic coordinator shall have the  
133 delegated the authority and assigned responsibility to effect payment for late payment penalties.

134           The traffic coordinator shall assist local departments of public works to resolve right-of-  
135 way issues in a timely manner.

136           The traffic coordinator shall ensure that no civil penalties or late payment fees are  
137 included as reimbursable expenses to the ratepayers of that utility and shall ensure that such fees  
138 and penalties are for the account of the shareholders.

139           The traffic coordinator shall report to a senior officer of the utility who is responsible for  
140 utility operations.

141           The job/position description for the traffic coordinator shall be prepared and a copy shall  
142 be sent to the applicable commonwealth regulatory authority, which shall review each job  
143 description to ensure that each job/position description corresponds with the intent and  
144 provisions of this law. The utility will consider comments from the regulatory authority and  
145 modify the job/position description accordingly and provide a revised job/position for the  
146 regulatory body to maintain on file.

147           Just and reasonable expenses associated with the position and function of the traffic  
148 coordinator shall be allowable expenses and recoverable from ratepayer revenue.

149           SECTION 6. Cities and towns shall have the authority to perform the following  
150 functions and they may cite a public utility with a roadway safety violation if they have public  
151 utility assets in an open public roadway. Safety fines shall be limited to \$100 per utility asset per  
152 day. They may cite a public utility with roadway safety violations if utility assets in a roadway  
153 prevent it from being re-opened at the completion of a roadway construction project, and such  
154 fines shall be limited to \$250 per utility asset per day city and town citations shall be prepared in  
155 the name of the utility and sent to the attention of the traffic coordinator.



156           If the utility has been notified of roadway construction plans and elects not to relocate  
157 utility assets within the roadway construction timeframe, this law shall hold the utility  
158 responsible for their decision not to relocate utility assets.

159           If the utility appeals any safety violation fines and the fines are upheld in court, the utility  
160 shall compensate that municipality for legal fees charged to represent that municipality, fully  
161 weighted salary and benefit costs of the municipal authorities to prepare the appeal and attend  
162 the appeal and travel expense to and from the court appeal. A statement of total costs incurred  
163 shall be prepared by that municipality and sent to the traffic coordinator for the concerned utility  
164 for reimbursement.

165           Late payment of municipal fines or reimbursement of appeal costs shall bear a late  
166 payment fee if not paid within thirty days from the date sent. Unpaid amounts shall bear a late  
167 payment rate no greater than the fee charged to municipal residents for the late payment of real  
168 estate taxes. Late payment fees shall bear the late payment fee rate from the time the notice is  
169 sent until the date the total payment due is received.